MOTOR SPORTS INTERNATIONAL LTD & ORS

v

DELCONT (M) SDN BHD

COURT OF APPEAL, KUALA LUMPUR
TUAN GOPAL SRI RAM JCA
DATO' NH CHAN JCA
DATO' AHMAD FAIRUZ SHEIKH ABDUL HALIM J
[CIVIL APPEAL NO: W-02-277-94]
29 MAY 1996

CIVIL PROCEDURE: *Respondent obtained ex parte Mareva injunction against appellant – Appellant restrained from dealing with vehicles and bank account – Appellant applied to vary the order and also applied to have injunction dissolved – Respondent consents to remove restraint on bank account – Judge varies injunction on condition that appellant deposit RM300,000 into Court although this was not requested by respondent – Judge dismisses application to dissolve injunction – Appellant appeals against both these orders – Whether affidavit in support of ex parte summons complied with O. 29 r. 2A of the Rules of the High Court 1980 – Whether ex parte injunction should place a monetary limit on the sums frozen in the bank – Whether imposition of condition amounts to giving respondent priority over other creditors – Whether Mareva injunction intended to put a person in the position of a secured creditor.*

CIVIL PROCEDURE: *Appeal against order made in the exercise of a discretion – Whether Court of Appeal has original discretion – Conditions to be established by appellant before appellate Court entitled to exercise original discretion – Whether said conditions are present.*

The first appellant had entered into an agreement with the respondent whereby they were to bring vehicles and drivers into the country for a motor truck show whilst the respondent was to organise and promote the said shows. Pursuant to the agreement, shows were held and thus moneys were collected for admission to the shows.

Disputes arose between the two parties and consequently, the respondent issued a writ and a statement of claim claiming for certain sums. Further, the respondent, by way of an *ex parte* summons, obtained a *Mareva* injunction restraining the appellants from dealing with the vehicles and from dealing with the bank accounts into which proceeds of the show were deposited.

Subsequently, the appellants took out two summonses. By the first, they applied to vary the injunction, whereas the second was an application to dissolve the injunction altogether. The respondent magnanimously agreed to vary the injunction partially so as to remove the restraint on dealing with the bank

accounts. The learned judge, however, in ordering the variation, imposed a condition requesting the appellant to deposit RM300,000 in Court. This was done even though the respondent had not asked for the imposition of such a condition. As for the application to dissolve the injunction, the judge ordered against the application. This hearing is the appeal against these two orders of the High Court.

Counsel for the appellants submitted three relevant grounds upon which the injunction should be dissolved. Firstly, it was claimed that the affidavit in support of the *ex parte* summons leading to the granting of the injunction did not comply with O. 29 r. 2A. Secondly, it was contended that the *ex parte* order did not specify a monetary limit on the sums frozen in the bank. Counsel for the respondent, in response to this, submitted that no harm was caused as a result of the failure to include an upper limit because in any case the restraint over the bank accounts was later varied. Lastly, it was argued that the imposition of the condition amounts to giving the respondent priority over all other creditors. This leads to the respondent being treated as a secured creditor which, it was submitted, is contrary to the purpose of a *Mareva* injunction.

Held:

Per Gopal Sri Ram JCA (delivering the judgment of the Court):

[1] Order 29 r. 2A of the Rules of the High Court 1980 is the provision which states what information the affidavit in support should contain and these are: the facts giving rise to the claim, the facts giving rise to the interlocutory relief, justification for applying by way of *ex parte*, any answer the defendant has asserted or might assert in response to the claim or the interlocutory relief, any fact known to the applicant which might dissuade the Court from granting the relief *ex parte*, whether any previous similar *ex parte* application has been made and lastly, information as to the precise relief sought. The policy behind the introduction of O. 29 r. 2A is to ensure that *ex parte* injunctions are granted only in cases where they are truly necessary. Therefore, to ensure that the policy is not defeated, there must be strict compliance with the said provision. This is more so where the injunctions sought is either a *Mareva* or an *Anton Piller* injunction because of the substantial damage that may be caused by such injunctions. In the present case, the Court finds that the requirements of O. 29 r. 2A have been flagrantly disregarded especially sub-paragraph (d) which requires the disclosure of the answer that the defendant has or might assert in response to the plaintiff's claim.

[2] The principles governing *Mareva* injunctions is that the restraint placed upon the defendant ought not to be more than is absolutely necessary. Where a plaintiff claims for an exact sum, as is the case here, the *Mareva* injunction restraining the defendant from dissipating his assets must specify an upper limit of the sum that is sought to be protected by the

injunction. If there is no such limit specified, the injunction may be said to be too wide and thus it may be oppressive. And as this is an equitable relief, the Court should carefully weigh the balance of justice to ensure that any relief granted in the exercise of the Court's *Mareva* jurisdiction is not used as an instrument of oppression.

[3] As for the argument that no harm was caused since the restraint on the bank account was later lifted, the Court does not agree. A *Mareva* injunction must be valid from the date it was granted. If such an injunction was oppressive by its terms at the date of its grant, any subsequent variation will reduce or remove the oppression only in the future. The defect contained in the injunction at the time it was granted, cannot be removed by the subsequent variation.

[4] A *Mareva* injunction is not intended to give a plaintiff priority over the defendant's assets. It is not supposed to put a plaintiff in the position of a secured creditor. Thus the imposition of the condition offends the principles governing the grant of a *Mareva* injunction.

[5] The orders appealed against were made in the exercise of a discretion vested in the Judge. The Court of Appeal does not have any original discretion in an appeal such as this. Where this is the case, the appellant must first establish that the Judge had either erred in principle, or has taken into account an irrelevant consideration, or has not taken into account a relevant consideration when coming to his decision, or that the order has caused an injustice. Only if one or more of the above have been proved can this Court exercise an original discretion. On the facts of the present case, the Court is satisfied that the learned Judge had erred in principle ie. the injunction and the variation granted were against established principles. Thus, appellate interference is justified.

[Appeal allowed with costs]

***[Bahasa Malaysia** Translation of Headnotes]*

***PROSEDUR SIVIL:** Responden mendapatkan injunksi Mareva ex parte terhadap perayu – Perayu dihalang daripada berurusan dengan kenderaan dan akaun bank – Pemohon memohon untuk mengubah perintah dan juga memohon untuk membubarkan injunksi – Responden membenarkan penyekatan ke atas akaun bank dibatalkan – Hakim mengubah injunksi dengan syarat responden mendepositkan RM300,000 kepada Mahkamah walaupun ini tidak diminta oleh responden – Hakim menolak permohonan untuk membubarkan injunksi – Perayu merayu terhadap kedua-dua perintah ini – Samada afidavit yang menyokong saman ex parte mematuhi A. 29 k. 24 Kaedah-kaedah Mahkamah Tinggi 1980 – Samada injunksi ex parte seharusnya mengenakan had kewangan ke atas jumlah yang dibekukan dalam bank – Samada pengenaan syarat*

memberikan responden hak istimewa yang mengatasi pemiutang-pemiutang lain – Samada injunksi Mareva bertujuan untuk meletakan seseorang dalam kedudukan pemiutang bercagar.

PROSEDUR SIVIL: *Rayuan terhadap perintah dibuat dalam melaksanakan suatu budibicara – Samada Mahkamah Rayuan mempunyai budibicara asal – Syarat-syarat yang perlu dipenuhi oleh perayu sebelum Mahkamah Rayuan berhak untuk melaksanakan budibicara asal – Samada syarat-syarat tersebut wujud.*

Perayu pertama telah memasuki satu perjanjian dengan responden di mana mereka dikehendaki membawa masuk ke dalam negeri kenderaan-kenderaan dan pemandu-pemandu untuk satu pertunjukan motor trak sedangkan responden pula dikehendaki menganjurkan dan mempromosikan pertunjukan-pertunjukan tersebut. Selaras dengan perjanjian tersebut, pertunjukan-pertunjukan telah diadakan dan dengan itu wang telah dikutip untuk tiket masuk ke pertunjukan-pertunjukan tersebut.

Pertikaian berbangkit antara kedua-dua pihak dan akibatnya, responden telah mengeluarkan satu writ dan satu pernyataan tuntutan menuntut jumlah yang tertentu. Selanjutnya, responden tersebut melalui satu saman *ex parte,* telah mendapatkan injunksi *Mareva* yang menghalang perayu daripada berurusan dengan kenderaan-kenderaan tersebut dan juga daripada berurusan dengan akaun-akaun bank ke dalam mana hasil daripada pertunjukan tersebut telah didepositkan.

Berikutan itu, perayu telah mengeluarkan dua saman. Melalui saman yang pertama, mereka telah memohon untuk mengubah injunksi tersebut, sedangkan saman yang kedua pula merupakan satu permohonan untuk membubarkan injunksi tersebut sama sekali. Responden dengan baik hatinya, telah bersetuju untuk mengubah injunksi tersebut sebahagiannya bagi membatalkan halangan ke atas urusan dengan akaun bank tersebut. Hakim yang bijaksana, namun begitu, dalam memerintahkan pengubahan tersebut, telah mengenakan satu syarat, meminta perayu mendepositkan RM300,000 ke dalam Mahkamah. Ini telah dilakukan walaupun responden telah tidak meminta untuk dikenakan dengan syarat yang sedemikian. Berhubung dengan permohonan untuk membubarkan injunksi tersebut, Hakim telah memerintahkan bertentangan dengan permohonan tersebut. Perbicaraan ini adalah rayuan terhadap perintah Mahkamah Tinggi ini.

Peguam bagi pihak perayu telah mengemukakan tiga alasan yang relevan di atas mana injunksi tersebut seharusnya dibubarkan. Pertamanya, ia telah dituntut bahawa afidavit yang menyokong saman *ex parte* tersebut telah tidak mematuhi A. 29 k. 24. Keduanya, ianya telah ditegaskan bahawa perintah *ex parte* tersebut tidak menyatakan dengan khusus satu had kewangan ke atas jumlah yang dibekukan di dalam bank. Peguam bagi pihak responden, bagi menjawabnya, berhujah bahawa tiada kemudaratan telah disebabkan akibat kegagalan untuk memasukan suatu had yang lebih kerana dalam apa keadaan

sekalipun halangan ke atas akaun-akaun bank tersebut telah kemudiannya diubah. Akhirnya, dihujahkan bahawa pengenaan syarat tersebut mengakibatkan responden diberi keutamaan yang melebihi kesemua pemiutang yang lain. Ini menjadikan responden dianggap sebagai pemiutang bercagar yang mana, telah dihujahkan, adalah bertentangan dengan tujuan suatu injunksi *Mareva*.

Diputuskan:

Oleh Gopal Sri Ram HMR (menyampaikan penghakiman Mahkamah):

[1] Aturan 29 k. 2A Kaedah-kaedah Mahkamah Tinggi 1980 adalah peruntukan yang menyatakan apakah maklumat yang harus terkandung dalam afidavit sokongan dan maklumat-maklumat ini adalah: fakta-fakta yang menyebabkan berbangkitnya tuntutan tersebut, fakta-fakta yang menyebabkan berbangkitnya relif interlokutori, justifikasi kerana memohon secara *ex parte*, apa-apa jawapan yang telah ditegaskan oleh defendan atau mungkin ditegaskan sebagai jawapan kepada tuntutan ataupun relif interlokutori tersebut, apa-apa fakta yang diketahui oleh pemohon, yang akan memujuk Mahkamah supaya jangan memberikan relif *ex parte*, samada apa-apa permohonan *ex parte* yang sama telah dibuat dan akhir sekali, maklumat berhubung dengan relif tepat yang dipohon. Dasar di sebalik pengemukaan A. 29 k. 2A adalah bagi memastikan bahawa injunksi *ex parte* diberikan hanya dalam kes-kes di mana ianya benar-benar perlu. Dengan itu, bagi memastikan supaya dasar itu tidak disangkal, haruslah berlaku pematuhan yang sesungguhnya ke atas peruntukan tersebut. Ini mungkin sedemikian rupa di mana injunksi yang dipohon adalah samada injunksi *Mareva* atau Anton Pillar kerana gantirugi substansial yang mungkin disebabkan oleh injunksi yang sedemikian. Dalam kes semasa ini, Mahkamah telah mendapati bahawa kehendak-kehendak A. 29 k. 2A telah secara terang-terang tidak dipedulikan khususnya perenggan kecil (d) yang mana menghendakkan pendedahan jawapan yang telah atau akan ditegaskan oleh defendan sebagai jawapan kepada tuntutan plaintif.

[2] Prinsip-prinsip yang menguasai injunksi *Mareva* adalah bahawa halangan yang diletakkan ke atas defendan tidak seharusnya lebih daripada yang secara mutlaknya diperlukan. Di mana plaintif menuntut satu jumlah yang tepat, sepertimana yang terdapat dalam kes ini, injunksi *Mareva* yang menghalang defendan daripada melesapkan aset-asetnya mestilah menentukan had yang lebih tinggi bagi jumlah yang dipohon untuk dilindung oleh injunksi tersebut. Jika tidak terdapat had yang yang sedemikian ditentukan, injunksi tersebut mungkin bersifat menindas. Dan oleh kerana ini merupakan relif ekuiti, Mahkamah haruslah menimbang imbangan keadilan dengan teliti bagi memastikan bahawa apa-apa relif yang dipohon dalam melaksanakan budibicara *Mareva* Mahkamah tidak digunakan sebagai satu suratcara untuk penindasan.

[3] Berhubung dengan hujahan bahawa tiada kemudaratan telah disebabkan oleh kerana halangan ke atas akaun bank tersebut telah kemudiannya dibatalkan, Mahkamah tidak bersetuju dengan hujahan ini. Sesuatu injunksi *Mareva* mestilah sah daripada tarikh ianya diberikan. Jika injunksi yang sedemikian bersifat menindas, menurut terma-termanya pada tarikh pemberian, apa-apa pengubahan yang berikutan akan hanya mengurangkan atau membatalkan penindasan tersebut hanya pada masa yang akan datang. Ketidaksempurnaan yang terkandung dalam injunksi tersebut ketika ianya diberikan, tidak boleh dibatalkan oleh pengubahan yang berikutan.

[4] Sesuatu injunksi *Mareva* tidak diniatkan untuk memberikan plaintif keutamaan ke atas aset-aset defendan. Ianya tidak sepatutnya meletakan plaintif dalam kedudukan pemiutang bercagar. Dengan itu pengenaan syarat tersebut menyalahi prinsip-prinsip yang menguasai pemberian satu injunksi *Mareva*.

[5] Perintah-perintah terhadap mana dirayui, telah dibuat ketika melaksanakan satu budibicara yang terletakhak pada Hakim. Mahkamah Rayuan tidak mempunyai apa-apa budibicara asal dalam sesuatu rayuan seperti ini. Di mana keadaan sebegini, perayu mestilah pertamanya menentukan bahawa Hakim telah samada tersilap pada asasnya, atau telah mengambilkira pertimbangan yang tak relevan, atau bahawa perintah tersebut telah menyebabkan ketidakadilan. Mahkamah hanya boleh melaksanakan suatu budibicara asal jika satu atau lebih daripada yang dinyatakan diatas telah terbukti. Menurut fakta-fakta kes semasa ini, Mahkamah berpuashati bahawa Hakim yang bijaksana telah tersalah menurut prinsip, iaitu, injunksi dan pengubahan yang diberikan adalah bertentangan dengan prinsip-prinsip tetap. Dengan itu gangguan rayuan adalah wajar.

[Rayuan dibenarkan dengan kos]

Cases referred to:
Searose Ltd. v. Seatrain (UK) Ltd. [1981] 1 WLR 894 ***(foll)***
Z Ltd. v. A-Z & AA-LL [1982] 1 QB 558 ***(foll)***
Iraqi Ministry of Defence v. Arcepey Shipping Co. SA [1981] QB 65 ***(foll)***
S & F International Ltd. v. Trans-Con Engineering Sdn. Bhd. [1985] 2 CLJ 228 ***(cit)***

Legislation referred to:
Rules of the High Court 1980, O. 29 r. 2A

For the appellants - Robert Lazar; (Maidzuara Mohamed with him); M/s. Shearn Delamore & Co.
For the respondent - Chin Chee Leong; M/s. Radhakrishnan & Co.

JUDGMENT

Gopal Sri Ram JCA:

This is a composite appeal against two orders of the High Court at Kuala Lumpur made on two summonses touching upon the same subject matter. By the first order, the learned Judge refused an application to discharge an *ex parte Mareva* injunction directed against the appellants. By the second, he varied the injunction in question upon the condition that the appellants deposit a sum of RM300,000 within two weeks from the date of the order.

The facts and chronology relevant to the appeal are as follows.

The first appellant is the producer of motor truck shows. It wanted to stage its shows in Malaysia. For this purpose, it needed someone in this country to organise and to promote the shows. The respondent was identified to carry out this task.

On 9 July 1994, an agreement was entered into between the first appellant and the respondent. One of the recitals to this agreement describes the respondent as having experience and expertise to organise and promote the shows which the first appellant had in mind. The venture involved the first appellant bringing into this country several motor trucks belonging to it, as well as the drivers who would demonstrate the versatility of the vehicles at the planned shows.

Pursuant to the aforesaid agreement, the appellants brought the vehicles in question into this country and held performances which were promoted by the respondent. Moneys were collected from members of the public who gained admission to these shows.

Later, while the vehicles were still in this country, disputes arose between the parties. The respondent then caused to be issued a writ and a statement of claim on 8 November 1994, claiming several sums, including the tax payable on the sums collected at the performances. On the same day, the respondent took out an *ex parte* summons and obtained a *Mareva* injunction restraining the appellants from dealing in any way with the vehicles in question (which were then in Labuan) and from dealing with the bank accounts into which the proceeds of the shows had been paid.

The appellants then took out two summonses. By the first, they sought to vary the order of 8 November 1994, and by the second, they applied to have the injunction dissolved altogether. In respect of the first summons, the respondent agreed to have the injunction partially varied by consenting to a removal of the restraint over the bank accounts. The learned Judge granted the other variations sought but, as earlier observed, also directed the appellants to deposit

a sum of RM300,000 in Court, although the respondent had not sought the imposition of such a requirement. Simultaneously, the learned Judge dismissed the appellants' application to set aside the injunction.

Before us, Encik Robert Lazar who appeared for the appellants advanced a number of grounds on which the injunction should be dissolved. However we find it necessary to deal with only three of them.

First, he submitted that the affidavit in support of the *ex parte* summons on which the respondent obtained the injunction did not comply with the requirements of O. 29 r. 2A. For completeness, we reproduce that rule below:

> (2A) The affidavit in support shall contain a clear and concise statement:
>
> (a) of the facts giving rise to the claim against the defendant in the proceedings;
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> (b) of the facts giving rise to the claim for the interlocutory relief,
>
> (c) of the facts relied on as justifying application *ex parte*, including details of any notice given to the defendant or, if none has been given, the reason for giving none;
>
> (d) of any answer asserted by the defendant (or which he is thought likely to assert) either to the claim in the action or to the claim for interlocutory relief,
>
> (e) of any facts known to the applicant which might lead the Court not to grant relief *ex parte;*
>
> (f) of whether any previous similar *ex parte* application has been made to any other Judge, and if so, the order made in that previous application; and
>
> (g) of the precise relief sought.

The provisions of O. 29, r. 2A were introduced by amendment in order to ensure that *ex parte* injunctions of any sort were not granted willy-nilly, but only in cases where they were truly called for. In order to ensure that the policy behind the introduction of r. 2A is not defeated, High Courts must demand strict compliance with its terms. More so, when the relief applied for is in the nature of a *Mareva* or an *Anton Piller* type of injunction because of the incalculable harm and damage that may be caused to a defendant by the grant of either of these orders.

Having perused the affidavit in question, we find that there has not been even a feeble attempt to meet the requirements of r. 2A, especially sub-paragraph (d) thereof. On this ground alone, the *ex parte* injunction ought to have been dissolved by the learned Judge.

Second, Counsel for the appellants has drawn our attention to the fact that the *ex parte* order did not place a monetary limit on the sums frozen in the bank accounts.

Now, it is a well-established principle governing *Mareva* injunctions that they ought not to place a restraint upon a defendant more than is absolutely necessary. See, *Searose Ltd. v. Seatrain (UK) Ltd.* [1981] 1 WLR 894, at p. 897, per Robert Goff J. In a case such as the present, where the amount of the claim has been quantified, it is necessary for the order of Court to sufficiently identify the upper limit of the sum that is sought to be protected by the injunction. As Lord Denning observed in *Z Ltd. v. A-Z & AA-LL* [1982] 1 QB 558, 576:

> In other cases, however, it may still be desirable to insert a maximum amount in the general injunction as against the defendant himself. But, as this is unworkable against a bank, it would at the same time be desirable to add a special injunction restraining the defendant from disposing of any of the sums standing to the credit of the defendant in a specified bank account in excess of the maximum: or from disposing of any item deposited with the specified bank for safe custody. The reason being that every bank or other innocent third party should know exactly what it should or should not do.

Also see, *Iraqi Ministry of Defence v. Arcepey Shipping Co. SA* [1981] QB 65.

In our judgment, where a plaintiff claims an exact sum, a *Mareva* injunction that restrains the defendant from dissipating his assets must specify an upper limit: if it does not, then the order is liable to be condemned as being too wide and therefore oppressive. The remedy of a *Mareva* is, after all, equitable relief that is granted to ensure that the course of justice is not thwarted. Since equitable considerations are involved, a Court should carefully weigh the balance of justice to ensure that any order it makes or any relief it grants in the exercise of its *Mareva* jurisdiction is not used as an instrument of oppression.

Encik Chin Chee Leong, who appeared for the respondent, argued that although the upper limit rule was not observed in the present case, no harm was occasioned, because the restraint upon dealing with the bank accounts was later varied by consent. With respect, we do not see this as being a satisfactory answer to the point made by Encik Lazar. The point of time at which the validity of a *Mareva* injunction is to be tested is the date of its grant and by reference to its terms as they stood at that date. If such an injunction is oppressive by its terms at the date of its grant, any subsequent variation may merely have the effect of ameliorating the oppression with regard to the future. It does not cleanse the tainted order of the taint which was within it at the time of its grant. In the circumstances, we are in agreement with the argument advanced on the appellants' behalf.

Third and lastly, Encik Lazar criticised the learned Judge's order, made *suo motu,* requiring the appellants to deposit a sum of RM300,000 within two weeks from the date of his order. He argued that the effect of the Judge's order was to accord the respondent priority over other creditors and to place it in the position of a secured creditor. This, he said, was contrary to the purpose of the *Mareva* jurisdiction.

In support of his argument, Counsel cited the following passage in the judgment of Abdoolcader FJ in *S & F International Ltd. v. Trans-Con Engineering Sdn. Bhd.* [1985] 2 CLJ 228, 231:

> It might perhaps be convenient at this stage to concisely perpend the principles and policy underlying a *Mareva* order elucidated in a chain of related cases of which we need only refer to three. In *PCW (Underwriting Agencies) Ltd. v. Dixon & Anor.* [1983] 2 All ER 158 which sets out the policy underlying the *Mareva* jurisdiction, it was held that the sole purpose of a *Mareva* injunction was to prevent a plaintiff being cheated out of the proceeds of an action, should he be successful, by a defendant transferring his assets abroad or dissipating his assets within the jurisdiction, and that the remedy was not intended to give a plaintiff priority over those assets, or to prevent a defendant from paying his debts as they fell due, or to punish him for his alleged misdeeds, or to enable a plaintiff to exert pressure on him to settle an action. This decision of Lloyd J went on appeal to the Court of Appeal ([1983] 2 All ER 697) which however did not deliver a judgment but by consent allowed the appeal and varied the Judge's order, but the principles enunciated by Lloyd J, were unaffected by the consensual variation made in the light of the factual circumstances of that case. The English Court of Appeal has also held in *Campbell Mussells & Ors. v. Thompson & Anor.,* The Times, 30th May, 1984 that a *Mareva* injunction was never intended to put a plaintiff in the position of a secured creditor and every case had to be dealt with on its own merits.

We are in agreement with Encik Lazar. In our judgment, it was quite wrong for the learned Judge to have imposed the condition in question. There is nothing in his judgement to show that he was alive to the effect which this part of his order would have. It cannot be gainsaid that the condition he imposed offended the principles governing the *Mareva* jurisdiction.

The principles governing an appeal such as this are in the forefront of our minds. We are aware that the orders appealed from were made in the exercise of a discretion vested in the learned Judge. This Court, in an appeal such as this, is not possessed of any original discretion. Its initial function is one of review only. It is only after an appellant has demonstrated that the Judge to whom the law entrusts the original discretion has erred in principle, or has taken into account an irrelevant consideration, or has failed to take into account a relevant consideration when arriving at his decision, or that the order made has caused an injustice, that this Court becomes entitled to exercise an original discretion.

Having given this matter careful consideration, we came to the conclusion that, for the reasons given in this judgement, this is a case in which the learned Judge erred in principle. Indeed, the *ex parte* injunction and the condition imposed by the learned Judge in the variation he granted were contrary to principle and cannot be permitted to stand. The present appeal therefore falls within the category of cases in which appellate interference is justified.

Accordingly, the appeal was allowed with costs. All orders made by the learned Judge were set aside. The *ex parte* injunction and the variation thereof were dissolved. The deposit paid into Court by the appellants was ordered to be refunded to them. The appellants were also awarded the costs of the proceedings in the Court below.

Reported by S. Dharmendran